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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

HYLTON, ROBIN ANNETTE

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3727

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,784

Applicant(s)

GERMAIN ET AL. *ch*

Examiner

Robin Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-28 and 42-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-28 and 42-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1,4,5,9-11,13-17,19,21,23-25,27,42-44, and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated Larson (US 3,016,168).

See figures 1-4 depicting first closure 32 covering opening 31 to provide a smaller opening 38, and second closure 48 covering the first. Although the hinges do not lie on the same side, they do lie in parallel planes.

4. Claims 1,4,7-11,13-17,19-21,23-25,27,28,42-44,46-48, and 50-56 are rejected under 35 U.S.C. 102(e) as being anticipated by Randall et al. (US 6,382,476).

Panel 66 has a first panel opening 78, a first closure 102 having a second opening smaller than the first panel opening, and a second closure 202 for closing the second opening.

Claim Rejections - 35 USC § 103

5. Claims 22 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson in view of Morgan, Jr. et al. (US Des. 341,380).

Larson teaches the claimed method except for indicia on the lid.

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Morgan, Jr. teaches it is known to provide proprietary indicia on a container lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of indicia on the lid of Larson. Doing so provides advertisement for the manufacturing company.

6. Claims 6,12,18,26, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall in view of Nava et al. (US 6,070,752).

Randall teaches the claimed lid and container except for the first flap including a plurality of resilient members.

Nava teaches a lid 112 having a dispensing opening including a plurality of resilient members (see figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient members to the first flap of Randall. Doing so provides an opening capable of receiving and securely holding a straw.

7. Claims 22 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall in view of Morgan, Jr. et al. (US Des. 341,380).

Randall teaches the claimed method except for indicia on the lid.

Morgan, Jr. teaches it is known to provide proprietary indicia on a container lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of indicia on the lid of Randall. Doing so provides advertisement for the manufacturing company.

Response to Arguments

8. Applicant's arguments with respect to amended claims 1,2,4-28 and new claims 42-56 have been considered but are moot in view of the new grounds of rejection.

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Conclusion

9. It is noted that other rejections under 35 USC 102 and 103 are possible. However, in an effort to not overwhelm applicant and the examiner, all possible rejections are not set forth in this Office action. See for instance Dabich (US 4,535,908) and Wood (US 5,975,368).

Applicant is urged to carefully consider the art of record prior to submission of a response to this Office action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various double closure lids are cited for their disclosures.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

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the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
December 14, 2002


Robin A. Hylton
Patent Examiner
GAU 3727